Veritas Health Services, Inc., d/b/a Chino Valley Medical Center *and* United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL–CIO. Case 31–CA–107321

February 4, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

On March 3, 2015, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondent, the General Counsel, the Charging Party, and employee Jose Lopez Jr., seeking to participate as an Intervenor, filed exceptions and supporting briefs. The Respondent, the General Counsel, the Charging Party, and Lopez filed answering briefs. The Respondent filed a reply brief to the General Counsel's and Charging Party's answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions,[3] to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[4]

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist from engaging in such conduct and, as explained in the remedy section of the judge's decision, to take certain affirmative action designed to effectuate the policies of the Act.[5] However, we shall amend the remedy in three respects.

First, in light of the Respondent's demonstrated proclivity to violate the Act with respect to the unit employees in this case, we shall modify the judge's remedy by providing for a broad cease-and-desist order.[6] See *Hickmott Foods*, 242 NLRB 1357 (1979).

Second, for the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that a general affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition. We adhere to the view that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68. We shall therefore substitute this remedy for the limited one-issue bargaining remedy recommended by the judge.

[1] We find no merit in employee Lopez' exceptions to the judge's denial of his motions to participate in this proceeding as an intervenor. The judge's denial of the motions to intervene was not an abuse of discretion, as it falls within established precedent concerning decertification petitioners' requests to intervene in unfair labor practice proceedings. See Sec. 102.29 of the Board's Rules and Regulations.

Some of the Respondent's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[2] In affirming the judge's findings, we do not rely on his citation to *Wynn Las Vegas, LLC*, 358 NLRB 690 (2012), which was decided by a panel that included Board Members who were not validly appointed. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). We also note that *Veritas Health Services, d/b/a Chino Valley Medical Center*, 359 NLRB No. 111 (2013), cited by the judge, was subsequently affirmed by a panel of validly-appointed Board Members in a decision reported at 362 NLRB No. 32 (2015).

The judge referred to the bargaining unit as the "per diem RN bargaining unit." However, the unit includes all full-time, regular part-time, and regular per diem registered nurses. We correct this inadvertent error.

[3] In concluding that the Respondent unlawfully withdrew recognition, the judge relied on three findings: (1) the Union's loss of majority support was tainted by the Respondent's unremedied unfair labor practices; (2) the withdrawal of recognition occurred during the extended certification year; and (3) the Respondent failed to introduce the decertification petition or other evidence demonstrating the Union's loss of majority support, even after the judge invited it to reintroduce a properly authenticated petition at the hearing. Any one of these findings is alone sufficient to justify the conclusion that the withdrawal of recognition was unlawful, and we adopt the judge's finding of the violation on all three independent grounds.

[4] We have modified the judge's recommended Order and substituted a new notice to conform to the Board's standard remedial language for the violation found and to the amended remedy.

[5] We adopt the judge's recommendations of a notice-reading remedy and the denial of bargaining costs to the Union.

In adopting the judge's recommendation that the Respondent be required to reimburse the General Counsel and the Union for their litigation expenses, we do not rely solely on the judge's finding that the Respondent mounted a frivolous defense. As an independent basis for requiring reimbursement, we also rely on the Board's inherent authority to control its own proceedings, including the authority to award litigation expenses through the application of the "bad-faith" exception to the American Rule. *HTH Corporation, Pacific Beach Corporation, and KOA Management, LLC, d/b/a Pacific Beach Hotel*, 361 NLRB No. 65, slip op. at 3–4 (2014); *Camelot Terrace*, 357 NLRB 1934, 1939 (2011). In particular, we find evidence of the Respondent's bad faith and disregard for the Board's processes in its failure to offer the decertification petition into evidence or to provide any other evidence supporting its withdrawal of recognition. Further, by withdrawing recognition during the certification bar year, the Respondent not only negated and undermined all prior negotiations between the parties, it also demonstrated its disregard for the Board's prior order extending the certification year and caused the additional expenditure of Agency resources in this proceeding.

[6] See *Veritas Health Services, Inc. d/b/a Chino Valley Medical Center*, supra, 362 NLRB No. 32, affg. 359 NLRB No. 111, slip op. at 23

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727, 738–739 (D.C. Cir. 2000); *Lee Lumber & Building. Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent*, supra at 738, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act."

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, supra, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition and resultant refusal to bargain with the Union. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. To the extent such opposition exists, moreover, we note that it may be at least in part the product of the Respondent's unfair labor practices.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the Respondent's withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order alone would be inadequate to remedy the Respondent's violation because it would permit another challenge to the Union's majority status before the taint of the Respondent's unlawful withdrawal of recognition has dissipated and before the employees have had a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unjust in circumstances such as those here, where the Respondent has shown a proclivity to commit serious violations with respect to this particular unit, and the Respondent's withdrawal of recognition would likely have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation. In order to provide employees with the opportunity to fairly assess for themselves the Union's effectiveness as a bargaining representative, the bargaining order requires the Respondent to bargain with the Union for a reasonable period of time.[7]

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.

Finally, in addition to our usual notice posting remedy, we shall order the Respondent to mail copies of the notice to all per diem employees and former employees employed at any time since the alleged unfair labor practices. We find such a remedy necessary to effectuate the policies of the Act because former employees lack access to the Respondent's facility and will not see the posted notice, and per diem employees do not regularly report to that location. See *Veritas Health Services,* supra, 362 NLRB No. 32, affg. 359 NLRB No. 111, slip op. at 1–2 fn. 4.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Veritas Health Services, Inc., d/b/a Chino Valley Medical Center, Chino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSME, AFL–CIO, and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.

[7] In *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 399 (2001), the Board held that "when an employer has unlawfully refused to recognize or bargain with an incumbent union, a reasonable time for bargaining before the union's majority status can be challenged will be no less than 6 months, but no more than 1 year." We therefore deny the Union's alternative remedial request for a more limited 6-month extension of the certification year bar.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time, regular part-time and regular per diem nurses employed by the employer at its 5451 Walnut Avenue, Chino, California facility in the following departments: emergency services, critical care services/intensive care unit, surgery, post-anesthesia care unit, outpatient services, gastrointestinal laboratory, cardiovascular catheterization laboratory, radiology, telemetry/direct observation unit and medical/surgical.

(b) Within 14 days after service by the Region, post at its facilities in Chino, California, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all per diem employees and former employees employed by the Respondent at any time since June 10, 2013. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 10, 2013.

(c) Within 14 days after service by the Region, hold a meeting or meetings, during working time, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees assembled for this purpose, by a responsible official of the Respondent, or by a Board agent in the presence of a responsible official of the Respondent, and providing an opportunity for representatives of the Board and the Union to be present for the reading of the notice.

(d) Pay to the General Counsel the costs and expenses incurred by him in the investigation, preparation, presentation, and conduct of this proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses, in an amount to be determined at the compliance stage of this proceeding.

(e) Pay to the Union the costs and expenses incurred by it in the investigation, preparation, presentation, and conduct of this proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses, in an amount to be determined at the compliance stage of this proceeding.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 4, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from, and fail and refuse to recognize and bargain with, United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSME, AFL–CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time, regular part-time and regular per diem nurses employed by us at our 5451 Walnut Avenue, Chino, California facility in the following departments: emergency services, critical care services/intensive care unit, surgery, post-anesthesia care unit, outpatient services, gastrointestinal laboratory, cardiovascular catheterization laboratory, radiology, telemetry/direct observation unit and medical/surgical.

WE WILL pay to the General Counsel the costs and expenses incurred by him in the investigation, preparation, presentation, and conduct of this proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses.

WE WILL pay to the Union the costs and expenses incurred by it in the investigation, preparation, presentation, and conduct of this proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses.

VERITAS HEALTH SERVICES, INC., D/B/A CHINO VALLEY MEDICAL CENTER

The Board's decision can be found at www.nlrb.gov/case/31-CA-107321 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

John Rubin, Esq., for the General Counsel.
Coleen Hanrahan, Esq. (DLA PIPER, LLP), of Washington, D.C., for the Respondent.
Lisa C. Demidovich, Esq., of San Dimas, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Los Angeles, California, on November 18, 2014, upon the amended complaint and notice of hearing issued on August 11, 2014, by the Acting Regional Director for Region 31.

The complaint alleges that Veritas Health Services, Inc., d/b/a Chino Valley Medical Center (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by withdrawing recognition from United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL–CIO (the Union).

Respondent filed a timely answer to the complaint stating it had committed no wrongdoing.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from counsel for the General Counsel, the Charging Party, and Respondent, I make the following findings of fact.[1]

[1] On February 24, 2014, bargaining unit employee Jose Lopez Jr. filed a motion to intervene in these proceedings. GC Exh. 1(n). On March 3, 2014, Associate Chief Administrative Law Judge Gerald Etchingham issued his order denying Lopez' motion. GC Exh. 1(u). At the commencement of the hearing herein, Lopez renewed his motion

I. JURISDICTION

Respondent stipulated[2] and I find that it is a California corporation, located in Chino, California, where it has been engaged in the business of operation of an acute care hospital. In the operation of the hospital, during the last 12 months, Respondent has derived gross revenues in excess of $250,000 and has purchase goods and services valued in excess of $5000 directly from points outside the State of California. It further stipulated and I find that it is an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.[3]

II. LABOR ORGANIZATION

The parties further stipulated[4] and I find that United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

This case has a long history dating to an initial election conducted in May 2008 in Case 31–RC–008689 that the Union lost. A Report and Recommendation on Objections issued January 16, 2009, found Respondent committed objectionable conduct affecting the outcome of the election.[5] The Union withdrew its objections on February 2, 2009. In Case 31–RC–008795, on February 22, 2010, the Union filed a petition for election among the per diem registered nurses employed by Respondent.[6] In April 2010, the Union won the election and Respondent filed objections to the election. On January 25, 2011, the Board overruled Respondent's objections and certified[7] the Union as the exclusive collective-bargaining representative of all full-time and regular part-time per diem registered nurses employed by Respondent at its Chino facility. (*Veritas I.*) On April 12, 2011, the Board, issued its decision in *Veritas Health Services, Inc. d/b/a Chino Valley Medical Center,* 356 NLRB No. 137 (2011) (*Veritas II*) (not reported in Board volumes)[8] finding that Respondent had failed and refused to recognize and bargain with the Union in the certified bargaining unit. The Board ordered Respondent to bargain in good faith with the Union and also ordered a *Mar-Jac* extension of the certification year. Respondent appealed the Board's decision and on March 13, 2012, the United States Court of Appeals for the District of Columbia Circuit issued its order[9] enforcing the Board's April 12, 2011 decision and order in *Veritas II*.

Meanwhile, on October 17, 2011, Administrative Law Judge William Kocol issued his decision[10] finding that from March 2010 through June 2010 Respondent had violated Sections 8(a)(1) of the Act by: threatening to close its Chino facility and terminate employees if they selected a union; threatened employees with loss of benefits if the selected the Union as collective-bargaining representative; coercively interrogated employees about their union activities; impliedly threatened employees with layoffs if they supported a union; told employees they might lose the family atmosphere and flexibility of scheduling at Chino Valley if the selected the Union; gave employees the impression that their union activities were under surveillance; threatened to discipline employees because they engaged in union activities; told employees they could no longer take vacations longer than 2 weeks because the employees had selected the Union to represent them; told employees that the family atmosphere at Chino Valley was over and that henceforth Chino Valley would begin strictly enforcing its policies and procedures, including tardiness, because the employees voted for the Union; broadly prohibited employees from speaking to the media including about the Union or about terms and conditions of employment; and by serving subpoenas on employees and unions that request information about employees' union activities, under circumstances where that information is not related to any issue in the legal proceeding. Judge Kocol found Respondent violated Section 8(a)(3) and (1) of the Act by: more strictly enforcing a tardiness rule and disciplining employees pursuant to that more strictly enforced rule because employees supported the Union, disciplining employees who failed to attend mandatory meetings because employees supported the Union; and by discharging Ronald Magsino because he and other employees supported the Union. Finally Judge Kocol found Respondent violated Section 8(a)(5) and (1) of the Act by: more strictly enforcing a tardiness rule and disciplining employees pursuant to that more strictly enforced rule without first giving the Union an opportunity to bargain concerning the change; beginning to discipline employees who had failed to attend mandatory meetings without first giving the Union an opportunity to bargain concerning the change; terminating the practice of paying part-time employees for the time spent attending classes needed to maintain the certifications necessary to perform their work at Chino Valley without first giving the Union an opportunity to bargain concerning the change; and by failing to provide requested information that is presumptively relevant to the Union's performance of its representational duties.

On April 30, 2013, the Board affirmed Judge Kocol's decision in *Veritas Health Services, Inc. d/b/a Chino Valley Medical Center,* 359 NLRB No. 111 (2013).[11] (*Veritas III.*) The Board's order issued during that period of time when the Supreme Court found that certain Board Members had been invalidly appointed by the President. *NLRB v. Noel Canning,* 134 S.Ct. 2550 (2014) (*Noel Canning*). On June 27, 2014, the Board issued an Order[12] setting aside the Decision and Order in

to intervene. Offering no new evidence or argument in support of his motion, it was denied.

[2] Jt. Exh. 62.

[3] Ibid.

[4] Ibid.

[5] Jt. Exh. 1 fn. 2.

[6] Ibid.

[7] Jt. Exh. 2.

[8] Jt. Exh. 3.

[9] Jt. Exh. 4.

[10] Jt. Exh. 5, p. 5.

[11] Id. at p. 1.

[12] Jt. Exh. 60, p. 5.

Veritas III in response to *Noel Canning*. On August 25, 2014, D.C. Circuit Case 13-1163 was dismissed upon motion of the Board. *Veritas III* is currently pending before the Board.[13]

While the Board's decision in *Veritas III,* may not be of precedential value at the present time, as noted above, Judge Kocol has made findings concerning Respondent's commission of unfair labor practices. While Judge Kocol's decision is not final, it is appropriate to consider and rely on those findings in deciding the issues in this case. The issues decided by Judge Kocol were fully litigated before him and relitigating or revisiting those issues de novo in this related proceeding, while the matter is before the Board, would be antithetical to judicial efficiency and economy and potentially lead to inconsistent results and unnecessary delays. See *Wynn Las Vegas, LLC*, 358 NLRB 690, 690 (2012); *Grand Rapids Press of Booth Newspapers, Inc.*, 327 NLRB 393, 394–395 (1998), enfd. mem. 215 F.3d 1327 (6th Cir. 2000); and *Detroit Newspapers Agency*, 326 NLRB 782 fn. 3 (1998), enf. denied on other grounds 216 F.3d 109 (D.C Cir. 2000).

B. The Facts of this Case

1. The parties' bargaining history

During collective bargaining in this case Respondent was represented by its chief negotiator Respondent's assistant general counsel, Mary Schottmiller (Schottmiller). Respondent admitted Schottmiller was an agent of Respondent within the meaning of Section 2(13) of the Act. The Union was represented in bargaining by its director of collective bargaining and representation, Barbara Lewis (Lewis), and Union Representative Penny Brown (Brown).

After the March 13, 2012 United States Court of Appeals for the District of Columbia Circuit order enforcing the Board's April 12, 2011 decision and order in *Veritas II,* on March 20, 2012, Union President Ken Deitz (Deitz) sent a letter[14] to Respondent's chief medical officer, James Lally (Lally), requesting bargaining for the per diem RN bargaining unit. In this letter, Deitz also requested that Respondent provide information for bargaining a first collective-bargaining agreement. That same day, Chino requested from the Union "the available dates you have for negotiations so we can get started right away."[15]

The record reflects that due to the years that had passed since the original organizing campaign, because there had been no information provided to the Union by Respondent to prepare for bargaining and because there had been much turnover in the bargaining unit, the Union had to engage in extensive preparation work for bargaining. By comparing the April 2010 *Excelsior* list to Respondent's RN list produced in spring 2012, the Union concluded that there had been a 47–49-percent turnover of RNs in the bargaining unit from 2010 to 2012. Absent access to Respondent's facility, the Union needed Respondent to produce a list of bargaining unit employees' names and addresses, in order to contact them.

The record reflects that the Union had to obtain contracts other unions had with Prime Healthcare hospitals in order to formulate proposals. Because of the lengthy delay in bargaining, the Union also had to meet with bargaining unit employees to draft proposals and review them with the bargaining team, which was not yet in existence in March 2012.

On April 20, 2012, Lewis wrote to Schottmiller proposing bargaining to commence on June 13 and 14, 2012.[16] Schottmiller agreed that negotiations would begin on June 13 and 14.[17]

From June 13, 2012, to May 24, 2013, the parties engaged in over 25 bargaining sessions[18] and by May 24, 2013, the parties had reached tentative agreement on 28 articles.[19] Tentative agreements were reflected by the parties' initialing and dating those agreed upon articles.[20]

On May 24, 2013, the only proposals the parties had not agreed upon were Compensation (art. 13), 401(k) (art. 28), and a new article entitled Full Negotiations, Complete Agreement and Waiver and Most Favored Nation clause (art. 30).[21]

At the August 7, 2012 bargaining session, Respondent gave the Union a proposal on article 28—401(k).[22] At the September 13, 2012 bargaining session, Respondent provided the Union with a proposal on Full Negotiations, Complete Agreement and Waiver.[23]

At the October 9, 2012 bargaining session, the Union gave Respondent a proposal on article 30, Most Favored Nation Clause, which Respondent rejected.[24]

At the May 24, 2013 bargaining session, Respondent provided the Union with a proposal regarding article 13—Compensation.[25] On May 28, 2013, Lewis requested that Schottmiller send Schottmiller's May 24, 2013 proposal on article 13 Compensation by email[26] and on May 29, 2013, Schottmiller sent the proposal to Lewis.[27]

On June 10, 2013, the Union sent a letter to Schottmiller advising her that the Union was accepting Respondent's article 13 proposal, that the Union was accepting Respondent's other two outstanding proposals on article 28—401(k) and the new article entitled Full Negotiations, Complete Agreement and Waiver, and that the Union was withdrawing its remaining proposal on article 30—Most Favored Nation Clause.[28] This letter was delivered via courier service on June 10, 2013, at 3:41 p.m.[29] In the letter, Lewis signed off on the three articles that the parties had reached agreement on to represent the Union's tentative agreement and requested that Schottmiller sign them and

[13] Jt. Exh. 61.
[14] Jt. Exh. 10.
[15] Jt. Exh. 11.
[16] Jt. Exh. 12.
[17] Jt. Exh. 13.
[18] Jt. Exh. 62 at par. 8.
[19] Id. at par. 9.
[20] Id. at par. 10.
[21] Id. at par. 11.
[22] Id. at par. 11(a).
[23] Id. at par. 11(b).
[24] Id. at par. 11(c).
[25] Id. at par. 11(d)
[26] Jt. Exh. 49.
[27] Jt. Exh. 50.
[28] Jt. Exh. 51.
[29] Jt. Exh. 52.

send them back for the Union's records. According to Lewis' unrebutted and credited testimony, as of June 10, 2013, Respondent had not withdrawn any of its proposals.

While there was no written tentative agreement on the term of the collective-bargaining agreement, according to Lewis' and Brown's uncontradicted and credited testimony, early in bargaining, Schottmiller had raised the idea of a 4-year contract which the Union rejected and in turn proposed a 3-year term, to which Schottmiller agreed. This understanding is consistent with the economic proposals between the parties which reflect a 3-year term.

2. Withdrawal of recognition

After receiving Lewis' June 10, 2013 letter accepting the Respondent's remaining proposals, Schottmiller emailed the Union on June 10, 2013, at 5:09 p.m., with an attached letter dated June 9, 2013, that stated Respondent had, " . . . received objective evidence on June 9, 2013 that a majority of employees in the certified/recognized unit no longer wish to be represented by your union. Accordingly, Chino will not continue negotiations with your union for a collective bargaining agreement."[30]

On June 13, 2013, Schottmiller sent another letter[31] to Lewis stating that her June 9, 2013 letter was sent in error and that Schottmiller was, " . . . hereby revoking and rescinding that letter." In this letter, Schottmiller admitted that she had received the Union's June 10, 2013 letter accepting Respondent's proposals. However she stated further:

> Because you have accepted proposals that were no longer were on the table, we are treating your acceptance as a counter-proposal subject to the company's acceptance.
>
> . . . .
>
> At this point, as Chino Valley Medical Center has notice that a majority of unit employees no longer support UNAC, it would be unlawful for the employer to enter into an agreement with UNAC. Accordingly, based on objective evidence that UNAC no longer represents a majority of employees in the bargaining unit, Chino Valley Medical Center is withdrawing recognition from UNAC.

On June 14, 2013, Lewis responded to Schottmiller by letter[32] in which she noted:

> After receipt of our June 10 letter, you emailed to me a letter withdrawing recognition and declaring that you would not continue negotiations. Further negotiations, however, were not needed as the parties had already reached agreement on all outstanding issues, and had a binding contract.
>
> Three days later, you revoked and rescinded your June 10 letter, claiming for the first time that the Employer's three outstanding proposals "no longer were on the table." The Employer and you, however, never previously took your proposals off the table.

[30] Jt. Exh. 53.
[31] Jt. Exh. 57.
[32] Jt. Exh. 58.

There is no evidence that Respondent ever told the Union that its proposals were withdrawn. Moreover, Respondent failed to offer into the record any evidence it may have relied upon when withdrawing recognition. While in its brief, Respondent refers to a decertification petition circulated among bargaining unit employees and that a majority of bargaining unit employees had signed the petition, there is no evidence of such a petition, its circulation, or how many employees signed the petition in the record.

C. The Analysis

Respondent's Withdrawal of Recognition

Complaint paragraphs 8 and 9 allege that on June 10 and 13, 2013, Respondent withdrew recognition of the Union in violation of Section 8(a)(5) of the Act.

1. Validity of the decertification petition given the unremedied unfair labor practices

A respondent may not avoid the duty to bargain by claiming that a union has lost majority status where that loss has been caused by its own unfair labor practices. *NLRB v. Williams Enterprises, Inc.*, 50 F.3d 1280, 1288 (4th Cir. 1995). Likewise, the Board in *LTD Ceramics, Inc*., 341 NLRB 86 (2004), held that:

> Evidence in support of a withdrawal of recognition, "must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Lee Lumber & Building Material Corp.,* 322 NLRB 175, 177 (1996) (Lee Lumber II), affd. in part and remanded in part 117 F.3d 1454 (D.C. Cir. 1997), citing *Guerdon Industries, Inc.*, 218 NLRB 658, 659, 661 (1975).

In *Lee Lumber II*, the Board held that in order to show that unfair labor practices taint a union's loss of majority support, there must be proof of a causal relationship between the unfair labor practice and the ensuing events indicating a loss of support. To determine whether a causal relationship has been established the following factors must be considered: the length of time between the unfair labor practice and the withdrawal of recognition, the nature of the violation, including the possibility of a detrimental or lasting effect on employees, the tendency to cause employee disaffection, and the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp*., 271 NLRB 78, 84 (1984).

In *Penn Tank Lines, Inc*., 336 NLRB 1066, 1067–1068 (2001), the Board found that a respondent's unfair labor practices tained a union loss of majority even where the unfair labor practice occurred 5 months before the loss of majority. In so finding the Board found that the termination of a union supporter was especially coercive and not likely to be forgotten, even over a period of years because the discharge of an active union supporter is exceptionally coercive and not likely to be forgotten going to the very heart of the Act, reinforcing employees' fear that they will be fired if they engage in union activity. *Koons Ford of Annapolis*, 282 NLRB 506, 508

(1986), enfd. 833 F.2d 310 (4th Cir. 1987). Likewise in *United Supermarkets, Inc.*, 287 NLRB 119, 120 (1987), where a petition was received 6 years after the employer's unfair labor practices, including the discharge of union supporters, the Board found the petition had been tainted by the unremedied unfair labor practices.

Here in *Veritas III, the Board affirmed* Judge Kocol's October 17, 2011 decision finding that Respondent, during the 2010 organizing campaign, had committed a multitude of hall mark violations of the Act, including threats to fire employees, threats to close the facility, and firing a union supporter.

Not until the March 13, 2012 decision of the United States Court of Appeals for the District of Columbia Circuit enforcing the Board's April 12, 2011 Decision and Order in *Veritas II,* did the parties begin collective bargaining in June 2012. On June 10, 2013, Respondent withdrew recognition from the Union.

Respondent contends that a sufficient period of time passed between the commission of the unremedied unfair labor practices in 2010 and the withdrawal of recognition in 2013 to ameliorate the effect of the unfair labor practices citing *Champion Enterprises, Inc.*, *d/b/a Champion Home Builders Co.,* 350 NLRB 788, 791 (2007); *Garden Ridge Management, Inc.,* 347 NLRB 131, 134 (2006); and *Lexus of Concord, Inc*., 343 NLRB 851, 852 (2004). These cases are inapposite. In each case Respondent has cited, the Board was faced with isolated or minor unfair labor practices that it found did not taint the petition. In *Champion,* supra, the Board found that the nature of the violations did not support a finding of taint since the respondent's confiscation of union materials from an employee workstation and the threat to an employee were isolated events involving one employee each. In *Garden Ridge*, supra, the Board found no specific proof that the respondent's unlawful refusal to meet at reasonable times caused the Union's loss of majority support. In *Lexus of Concord, Inc.,* supra, the Board found that while the Respondent placed an employee in an installer position without bargaining with the union 3 months before withdrawing recognition, there was no showing that the transfer had a detrimental or lasting effect on employees.

Unlike the cases cited above, here, the unremedied unfair labor practices were numerous and egregious, occurring in the context of an organizing campaign. This case is more akin to *United Supermarkets,* supra, and are Respondent's unfair labor practices are the sort that cause disaffection among employees, leading to withdrawal of support from the Union. Under these circumstances, Respondent is barred from withdrawing recognition from the Union.

2. Certification year

Both the General Counsel and the Union contend that Respondent withdrew recognition during the extended certification year. Respondent takes the position that the certification year should not have commenced with the first bargaining session on June 13, 2012, because the Union caused unreasonable delay in bargaining. *Dominguez Valley Hospital*, 287 NLRB 149, 150 (1987). Respondent further argues that the petitions signed a few days before the certification year expired does not justify forcing upon unit employees an unwanted union, citing *LTD Ceramics, Inc.*, 341 NLRB 86, 88, 94 (2004).

It is well established that a union is entitled to a conclusive presumption of majority status during the certification year even if an employer has evidence of loss of the union's majority support. Further, an employer may not withdraw recognition outside the certification year where the evidence of loss of majority support is obtained during the certification year. *Chelsea Industries, Inc.*, 331 NLRB 1648 (2000).

Here, the General Counsel and the Union contend that the certification year extension ran from June 13, 2012, to June 12, 2013, because the Board ordered a *Mar-Jac* extension of the certification year remedy for Respondent in *Veritas II*. Since Respondent refused to recognize and bargain with the Union, the Board's order was not enforced until March 13, 2012. The Board has held that when an employer refuses to bargain with a union while pursuing judicial review, the certification year begins on the date of the parties' first formal bargaining session following judicial enforcement of the Board's Order. *Virginia Mason Medical Center,* 350 NLRB 923, 923 (2007).

In *Van Dorn Plastic Machinery Co*., 300 NLRB 278 (1990), the Board cited *Dominguez Valley Hospital*, 287 NLRB 149, 150 (1987), enfd. 907 F.2d 905 (9th Cir. 1990), and held that, under circumstances similar to the instant case, some time can reasonably be allowed before the certification year begins for the union to reestablish contacts with unit employees to facilitate bargaining on their behalf. The Board rejected the argument that the certification year should commence when an employer expresses its willingness to bargain. The Board recognized that where the election was held years before bargaining commences, this justifies the union having time to reestablish contacts with unit employees to facilitate bargaining.

On March 20, 2012, Union President Deitz requested bargaining of Respondent for the certified RN bargaining unit. Deitz also requested that Respondent provide information relevant and necessary for bargaining a collective-bargaining agreement. That same day, Respondent requested from the Union available dates for negotiations. On April 20, 2012, the Union proposed bargaining to commence on June 13, 2012, to which Respondent agreed.

While Respondent contends that the Union engaged in a bad-faith delay in the commencement of bargaining, the record reflects that the Union had to do much work prior to beginning bargaining. The evidence shows that Union needed to reestablish contacts with the bargaining unit, which was difficult since there had been a 50-percent turnover rate. In addition, the Union promptly requested information that it was required to analyze. The Union had to reformulate a bargaining committee, train it, and formulate proposals. I find there was no inordinate delay in the Union beginning bargaining with Respondent and that the certification year should have commenced on June 13, 2012.

Respondent contends that even if the certification year commenced on June 13, 2012, as the General Counsel contends, the fact that the signatures were collected a few days before the end of the certification year is of no consequence, citing *LTD Ceramics, Inc.*, 341 NLRB at 88, 94. In *LTD Ceramics,* on July 21, an employee presented the respondent with a decertification

petition signed by 97 of 171 employees in the bargaining unit. Forty-nine of these signatures were dated July 15, the final day of the union's certification year. The rest were dated from July 16 to 20. On the basis of this petition, the Board found that the respondent validly withdrew recognition from the union. In *LTD,* the Board distinguished *Chelsea Industries*, 331 NLRB 1648, where the Board held that an employer could not withdraw recognition on the basis of a decertification petition signed by employees and received by the employer 5 months before the end of the certification year.

Here, Respondent chose not to offer the petition it received from bargaining unit employees into evidence. Thus, it is impossible to determine when employee signatures were collected. It is safe to say that the employee signatures were collected prior to June 9, 2013, when Respondent received the petition and within the certification year. Thus, this case is distinguishable from *LTD Ceramics,* supra.

I find that the Respondent's withdrawal of recognition was further invalid since the petition and the evidence contained in the petition was obtained during the certification year.

3. The evidence of lost majority

The test for an employer's withdrawal of recognition from a union is no longer the good-faith doubt test but whether the employer is in possession of evidence that the union has in fact lost majority support. *Levitz Furniture Co. of the Pacific, Inc.,* 333 NLRB 717 (2001). Under *Levitz,* the essential element to establish a lawful withdrawal of recognition by an employer is whether the employer had evidence that the union had lost majority support at the time it withdrew recognition. In *Alpha Associates*, 344 NLRB 782, 784–785 (2005), the Board held that, "an employer may withdraw recognition from the union only if it possesses evidence that the union has in fact lost majority support."

Here, Respondent has not introduced any evidence to support its assertion that it possessed evidence that the Union had lost majority support of bargaining unit employees at the time it withdrew recognition.

In her brief, counsel for Respondent suggests that I ruled she could not offer Respondent's Exhibit 8, the decertification petition, noting my partial comment on the implications of the Board's *Levitz Furniture Co.,* supra, and *Alpha Associates*, 344 NLRB at 784–785, decisions:

> [B]asically proof of objective considerations to justify withdrawal of recognition is a burden of the Employer. And it's a burden they have to establish at the time they receive the documents. So, . . . if somebody from the Employer . . . didn't authenticate all of these signatures at the time they received it, as far as I'm concerned, the objective considerations are invalid. You can't come in now and say "Oh, by the way, we'll show who they were." No, you had to do it then . . . . [Tr. 183, LL. 18–25, and Tr. 184, LL. 1–2.]

Counsel's contention misrepresents the exchange that took place. At the commencement of Respondent's case in chief, Respondent's counsel sought a stipulation that Respondent's Exhibit 8, a decertification petition, be received by stipulation of the parties. Counsel for the General Counsel and counsel for the Charging Party refused to stipulate to the authenticity of the signatures on the petition. After extensive discussion as to who could authenticate the signatures on the petition and the necessity for Respondent to prove under *Levitz* that it had evidence that a majority of bargaining unit employees had signed a petition, I told Respondent's counsel that she would have the opportunity to offer and authenticate the petition saying:

> You can't come in now and say "Oh, by the way, we'll show who they were." No, you had to do it then to have a good faith doubt at that point in time. You have to have proof, not good faith. It's not good faith, it's did you have proof that the Union had lost the majority. Now, maybe you can establish that, maybe you did that, I don't know. I'll give you an opportunity to show it. Okay? So, that's where I'm going with that. With respect to RX-8, that's something that Respondent's witness will have to establish. [Tr. 184, LL. 1–9.]

It is clear from a complete reading of the transcript that I in no way foreclosed Respondent's ability to authenticate and offer Respondent's Exhibit 8. Indeed, I made it quite clear I was giving counsel every opportunity to do so. Rather than attempt to offer Respondent's Exhibit 8, counsel for Respondent chose to offer no proof whatsoever of the evidence in support of its withdrawal of recognition from the Union.

Based upon the above, I find that Respondent unlawfully withdrew recognition from the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, Veritas Health Services, Inc., d/b/a Chino Valley Medical Center, is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSME, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive collective-bargaining representative of Respondent's employees in the following appropriate collective bargaining unit:

> All full-time, regular, part-time and regular per diem nurses employed by the employer at its 5451 Walnut Avenue, Chino, California facility in the following departments: emergency services, critical care services/intensive care unit, surgery, post-anesthesia care unit, outpatient services, gastrointestinal laboratory, cardiovascular catheterization laboratory, radiology, telemetry/direct observation unit and medical/surgical.

3. By withdrawing recognition of and refusing to bargain with the Union the Respondent committed unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

REMEDY

As part of the remedy herein the General Counsel seeks an order that the parties to return to the table and bargain on the only remaining unresolved subject, the effective date of the agreement.

By May 24, 2013, the parties had reached tentative agreement on 28 articles and the only proposals the parties had not agreed upon were Compensation (art. 13), 401(k) (art. 28), and

a new article entitled Full Negotiations, Complete Agreement and Waiver and Most Favored Nation clause (art. 30).

On June 10, 2013, the Union sent a letter to Respondent advising that the Union was accepting Respondent's article 13 proposal, that the Union was accepting Respondent's other two outstanding proposals on article 28—401(k), the new article entitled Full Negotiations, Complete Agreement and Waiver and that the Union was withdrawing its remaining proposal on article 30—Most Favored Nation Clause. As of June 10, 2013, Respondent had not withdrawn any of its proposals.

While there was no written tentative agreement on the term of the collective-bargaining agreement, the record reflects that during bargaining Respondent had raised the idea of a 4-year contract which the Union rejected and in turn proposed a 3-year term, to which Respondent agreed. This understanding is consistent with the economic proposals between the parties which reflect a 3-year term.

Where there is no express written agreement, the Board will infer an agreement from all of the circumstances regarding term and effective dates where there exists evidence that the parties had in fact reached agreement. *Transit Service Corp*., 312 NLRB 477, 481–482 (1993); *Sunglass Products Inc. d/b/a Personal Optics*, 342 NLRB 958, 962 (2004).

From all of the evidence I find that the parties had agreed to all of the terms of the collective-bargaining agreement including a 3-year term for the collective-bargaining agreement. However, it does not appear there is evidence the parties agreed to the effective date of the agreement.

In *Sheridan Manor Nursing Home, Inc.*, 329 NLRB 476, 478–479 (1999), a case remarkably similar to the instant case, the Board found that the respondent unlawfully withdrew recognition from the union after the parties had reached tentative agreement on all material subjects except for the effective date of the collective-bargaining agreement. While the Board found no violation of Section 8(a)(5) of the Act for refusal to execute the agreement, since there was no understanding concerning the contract's effective date, it nevertheless ordered the respondent to return to the bargaining table for the sole purpose of bargaining about the effective date.

Following the Board's mandate in *Sheridan Manor*, supra, I will order that Respondent bargain with the Union over only the effective date of the agreement.

In addition, as part of the remedy, the Union seeks an order awarding its bargaining costs, litigation expenses incurred herein, an extension of the certification year, and a notice reading.

Bargaining Costs

The Union contends that the remedy of bargaining costs should be awarded here because it claims Respondent has infected the core of a bargaining process to such an extent that their effects cannot be eliminated by the application of traditional remedies, citing *Unbelievable, Inc.,* 318 NLRB 857, 859 (1995), *Whitesell Corp.,* 357 NLRB 1119, 1123 (2011), and *Fallbrook Hospital Corp. d/b/a Fallbrook Hospital*, 360 NLRB No. 73, slip op. at 2 (2014). The Board found in *Unbelievable, Whitesell,* and *Fallbrook* that the respondents engaged in egregious surface bargaining designed to thwart the bargaining process.

The Union seems to argue that Respondent engaged in bad-faith bargaining during contract negotiations. However, this has not been alleged in the complaint herein and I have made no such finding. Here, the parties engaged in good-faith bargaining in over 25 sessions in a year's time. The parties, as found above, agreed to all the terms of a collective-bargaining agreement save its effective date. My order will require the parties to resume bargaining to determine only the effective date of their agreement. Given that virtually all terms of the collective-bargaining agreement were agreed to, I do not find that Respondent's conduct in bargaining herein was intended to thwart the bargaining process or to waste the Union's time. Under these circumstances, I do not agree that imposing the costs of the Union's bargaining is warranted.

Litigation Expenses because of Respondent's Frivolous Defense

The Union also seeks litigation expenses in this proceeding since Respondent put on no case-in-chief, called no witnesses, and failed to enter any admissible exhibits into the record.

The Board has awarded litigation costs where a respondent asserts frivolous defenses or otherwise exhibits bad faith in the conduct of litigation. *HTH Corp., Pacific Beach Corp., and KOA Management, LLC, a single Employer, d/b/a Pacific Beach Hotel*, 361 NLRB No. 65, slip op. at 3–4 (2014); *Camelot Terrace,* 357 NLRB 1934, 1937 (2011); *Teamsters Local Union No. 122, International Brotherhood of Teamsters,* 334 NLRB 1190, 1193 (2001); *Alwin Mfg. Co., Inc.,* 326 NLRB 646, 647 (1998), enfd. 192 F.3d 133 (D.C. Cir. 1999); *Lake Holiday Manor,* 325 NLRB 469, 469 fn. 5 (1998). While failing to call witnesses does not alone make a respondent's position "frivolous" for the purpose of receiving litigation expenses, the respondent must have otherwise made legitimate contentions. *Three Sisters Sportswear Co.,* supra at 897. Litigation expenses have been awarded where the respondent failed to put on any defense because failing to put on any defense has been found by the Board to be a frivolous defense. *Teamsters Local 122,* supra at 1194.

In *Three Sisters* both the ALJ and the Board declined to impose litigation expenses even where respondents called no witnesses and presented no defense to any of the unfair labor practices alleged. The Board agreed with the ALJ's definition of frivolous litigation as involving defenses that are not merely found to be without merit, but are contentions ''which are clearly meritless on their face.'' *Heck's, Inc.,* 191 NLRB 886, 889 (1971). The Board agreed with the ALJ that defenses are debatable rather than frivolous, where allegations are dependent on resolutions of credibility.

In *Teamsters Local 122,* supra, the respondent union engaged in pervasive and unlawful bad-faith bargaining with the object of compelling the employer to sell its business by engaging in a strategy of delay at the bargaining table. The Board found this strategy was carried over into the Boards' proceedings through respondent's inexorable and wasteful cross-examination and by its failure to mount any defenses.

In *HTH Corp.,* supra, the Board awarded litigation expenses in the face of pervasive, repeated, and unremedied violations of the Act and violations of the District Court 10(j) order.

Here, Respondent for a 2-year period refused to recognize and bargain with the Union until ordered to do so by the court of appeals in 2012. Thereafter, the parties engaged in what appears to have been good-faith bargaining for a period of 1 year, resulting in agreement on all terms save for the effective date of the contract. However, when the Union agreed to the final outstanding terms of the agreement, Respondent withdrew recognition, and refused any further bargaining with the Union allegedly due to evidence that the Union had lost the support of a majority of the bargaining unit employees. After the complaint issued, Respondent proffered by way of defense in its answer that the Union had unclean hands, that the Union bargained in bad faith, that the Union did not represent a majority of bargaining unit employees, that the Union's conduct disqualified it as representative of the employees, that the Union breached its fiduciary duty to unit employees and that the Union engaged in conduct to thwart unit employees Section 7 rights.

Respondent's entire defense rests upon its right to withdraw recognition from the Union and cease bargaining.[33] As discussed above, under *Levitz*, an employer has the burden of proof of showing that at the time it withdraws recognition from the union, it has evidence that the union has lost the support of a majority of employees in the bargaining unit. After the General Counsel presented its case and established that the Union was the certified representative of bargaining unit employees, that the parties had agreed to all terms of a collective-bargaining agreement save the effective date and rested, I advised Respondent that it would have an opportunity to establish that it had evidence that the Union had lost majority support of the unit employees. Respondent chose to proffer no evidence in its defense.

I find that this case is unlike *Three Sisters* in that none of the issues herein turned on credibility and there were no debatable issues raised in the record. Here, there is no issue of credibility with respect to the Respondent's unlawful withdrawal of recognition. In the absence of evidence in its defense there is no defense. I find this frivolous defense amounted to a waste of the Board's limited time and resources.

Under such circumstances, I shall order the Respondent to reimburse the General Counsel and the Union the costs and expenses incurred in the investigation, preparation, presentation, and conduct of the present proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses. These costs shall be determined at the compliance stage.

Extension of the Certification Year

Given my finding that no withdrawal of recognition from the Union is appropriate until Respondent remedies its past unfair labor practices which will entail a lengthy compliance period, given the absence of evidence of bad faith in bargaining from June 13, 2012, to June 10, 2013, given that all terms of the collective-bargaining agreement have been reached save the effective date, I find it unnecessary to extend the certification year.

Public Notice Reading

The Board has found that a notice reading is an effective remedy where the Respondent's unfair labor practices are so numerous, pervasive, and outrageous that such remedies are necessary to dissipate fully the coercive effects of the unfair labor practices found. *Federated Logistics & Operations,* 340 NLRB 255, 258 (2003), citing *Fieldcrest Cannon, Inc.,* 318 NLRB 470, 473 (1995).

Here, Respondent has engaged in numerous and serious unfair labor practices during the organizing campaign and has failed to remedy them. While a period of 2 years passed between commission of the pervasive and egregious unfair labor practices during the organizing campaign and commencement of bargaining, Respondent has continued to engage in conduct designed to deprive its employee of their collective-bargaining rights by unlawfully withdrawing recognition from the Union in June 2013. Such repeated unlawful conduct has likely had the effect of chilling employees' Section 7 activities and in order fully dissipate their coercive effect, a notice reading is appropriate. The notice shall also be read in the presence of all unit employees by a responsible management official or by a Board agent, in the presence of a management official.

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* 356 NLRB 6 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

ORDER

The Respondent, Veritas Health Services, Inc., d/b/a Chino Valley Medical Center, Chino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain in good faith with United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSME, AFL–CIO the exclusive collective-bargaining representative of its em-ployees in the following collective bargaining unit:

> All full-time, regular, part-time and regular per diem nurses employed by the employer at its 5451 Walnut Avenue, Chino, California facility in the following departments: emergency services, critical care services/intensive care unit, surgery, post-anesthesia care unit, outpatient services, gastrointestinal laboratory, cardiovascular catheterization laboratory, radiology, telemetry/direct observation unit and medical/surgicalIncluded:

[33] I find that Respondent's other six affirmative defenses were frivolous and unsupported by any facts or case law.

[34] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Refusing to bargain in good faith with the Union by withdrawing recognition of the Union as the exclusive collective-bargaining representative of bargaining unit employees on August 19, 2013.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* 356 NLRB 6 (2010).

(b) Reimburse the General Counsel and the Union the costs and expenses incurred in the investigation, preparation, presentation, and conduct of the present proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses. These costs shall be determined at the compliance stage.

(c) The notice to employees shall also be read in the presence of all unit employees by a responsible management official or by a Board agent, in the presence of a management official.

(d) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Chino, California, copies of the attached notice marked "Appendix."[35] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 10, 2013.

[35] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, filed with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. March 3, 2015

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

After a trial at which we appeared, argued and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT refuse to bargain in good faith with United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSME, AFL–CIO (the Union) as the exclusive collective-bargaining representative of its em-ployees in the following collective bargaining unit:

> All full-time, regular, part-time and regular per diem nurses employed by us at our 5451 Walnut Avenue, Chino, California facility in the following departments: emergency services, critical care services/intensive care unit, surgery, post-anesthesia care unit, outpatient services, gastrointestinal laboratory, cardiovascular catheterization laboratory, radiology, telemetry/direct observation unit and medical/surgical.

WE WILL NOT withdraw recognition from the Union and fail and refuse to bargain with the Union as your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

VERITAS HEALTH SERVICES, INC., D/B/A CHINO VALLEY MEDICAL CENTER

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-107321 or by using the QR code below. Alternatively, you can obtain a copy of the decision

from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.